under this chapter.' While a great deal of discussion has been had by counsel for both sides on the question of venue, it seems to this Court that it pertains not to venue so much as to multiplicity. It makes it clear, however, that the fact, as shown by this record, that there have been several prior judgments against the same claimant growing out of the same misbranding of the same articles, that is no obstacle to the present proceedings. The language relied upon by defendant commanding a transfer of the case, must be taken however in the light of the limitation that it applies 'in any case where the number of libels for condemnation proceedings is limited as above provided.' The language would seem to indicate that if there were more than one seizure it would be the duty of the trial judge to transfer the action from a jurisdiction remote from the claimant's residence to one in reasonable proximity to the same. However, no ruling to this effect is made as the Court could be in error as to the meaning of the language.

"The Court's refusal to granting the change of venue is therefore placed upon the ground that this is an action in rem and the jurisdiction of this Court is based upon the fact that the seizure was had in this district and this Court cannot transfer the case to another district where no seizure was had, even though a seizure in such other district could have been had.

"Motion for change of venue is denied."

The Government subsequently filed written interrogatories which were answered by the claimant on 6–6–60. Thereafter, the libel was amended to include the charges of misbranding under 502(f)(1) and 503(b)(4) as set forth above, and, on 3–7–61, a motion for summary judgment was filed by the Government on the basis that there were no genuine issues of material fact precluding judgment for the Government. On 3–22–61, the court granted the Government's motion for summary judgment and ordered the article condemned and destroyed.

6548. Peyote and peyote extract capsules. (F.D.C. No. 44571. S. Nos. 33–880 R, 34–806/7 R.)

QUANTITY: 6 ctns. containing a total of 294 lbs. and reused paper bags containing a total of 20 lbs. of *peyote;* and 29 unmarked envelopes containing 5 capsules each of peyote extract, at New York, N.Y.

SHIPPED: On 4–22–60, the 294-lb. lot and on 12–17–59, the 20-lb. lot, from Laredo, Tex., by Smith's Cacti Ranch.

LABEL IN PART: (Ctn.) "From: Smith's Cacti Ranch, P.O. 736, Laredo, Texas To: Barron Bruchlos, 234 Mulberry Street, New York, New York * * *"; (bag) "French Roast Flavor Cup Coffee * * * 1 Lb. Net."

RESULTS OF INVESTIGATION: Examination of the article in the 294-lb. and 20-lb. lots showed it to be *peyote.* The article in the capsules contained alkaloids of peyote and had been prepared from some of the *peyote* in the 20-lb. lot under the direction of the consignee of the articles, Barron Bruchlos, t/a Cart Wheel Coffee Shop.

LIBELED: 5–17–60, S. Dist. N.Y.

CHARGE: 502(b)—when shipped and while held for sale, the articles failed to bear labels containing (1) the name and place of business of the manufacturer, packer, or distributor and (2) an accurate statement of the quantity of the contents; 502(d)—the articles were a hypnotic substance, namely, *peyote,* and their labels failed to bear the name, quantity, or proportion of such substance and, in juxtaposition therewith, the statement "Warning—May be habit forming"; 502(e)(1)—the labels of the articles failed to bear the common or usual name of the articles; 502(f)(1)—the labeling of the articles failed to bear adequate directions for use; 503(b)(4)—the articles were drugs

subject to 503(b)(1) and their labels failed to bear the statement "Caution: Federal law prohibits dispensing without prescription."

DISPOSITION: The consignee of the articles appeared as claimant and filed an answer denying that the articles were subject to seizure. Subsequently, the Government filed interrogatories. On 12–6–60, the claimant died, and, on 1–18–61, the proctor for the claimant having consented, the court entered a decree of condemnation and destruction.

DRUGS AND DEVICES ACTIONABLE BECAUSE OF FAILURE TO BEAR ADEQUATE DIRECTIONS OR WARNING STATEMENTS*

6549. Lecithin capsules, strawberry oil, Minovals capsules, and Alma-Cado Oil. (F.D.C. No. 44654. S. Nos. 50–255 P, 50–257 P, 50–259 P, 50–262 P.)

INFORMATION FILED: 11–23–60, S. Dist. Ohio, against Roy C. Elkins, Miami, Fla.

ALLEGED VIOLATIONS: Between 10–7–59 and 10–9–59, while the articles were being held for sale at a health food store in Cincinnati, Ohio, after shipment in interstate commerce, the defendant, in the course of sales talks given by him at a Cincinnati hotel, caused oral representations to be made holding the articles out as a treatment for various diseases, symptoms, and conditions as hereinafter described, which acts resulted in the articles being misbranded.

LABEL IN PART: (Jar) "RoyelkinS 100 CAPSULES LECITHIN Suspended in Soybean Oil Distributed by ROY ELKINS HEALTH FOODS P.O. Box 782 Miami, Fla."; (btls.) "Roy Elkins Strawberry Oil Distributed by ROY ELKINS—BEVERLY HILLS, CALIF. NET CONTENTS 4 FL. OZ."; "RoyelkinS 100 CAPSULES MINOVALS WITH WHEAT GERM OIL Distributed by ROY ELKINS HEALTH FOODS P.O. Box 782 Miami, Fla."; and "Roy Elkins Famous ALMA-CADO OIL CONTAINS NO CHOLESTEROL NET CONTENTS 8 FL. OZS. PRICE $2.50 Distributed by ROY ELKINS P.O. Box 782, Miami 1, Florida."

CHARGE: 502(f)(1)—the labeling of the articles failed to bear adequate directions for use in the treatment of the diseases, symptoms, and conditions for which the articles were intended, namely, (*lecithin capsules*) disorders of the eyes, ears, circulatory system and cramps; (*strawberry oil*) rheumatoid conditions and neoplasms; (*Minovals capsules*) ulcers; and (*Alma-Cado Oil*) arthritis, disorders of the veins, and warts, which were the diseases, symptoms, and conditions for which the articles were held out by the defendant in the course of the above-mentioned sales talks.

PLEA: Guilty.

DISPOSITION: 4–7–61. Fine of $250 on each of the 4 counts of the information, with the fine on 3 of the counts being suspended on condition that the defendant not re-enter the health food lecturing business.

6550. Visan Assurance Food Supplement. (F.D.C. No. 44321. S. No. 61–265 P.)

INFORMATION FILED: 9–27–60, E. Dist. Mich., against Jean Kalin, Detroit, Mich.

ALLEGED VIOLATION: On 8–11–59, the defendant, in the course of a sales talk to persons present, made oral representations holding out *Visan Assurance Food Supplement* capsules and tablets as a treatment for the diseases, symptoms, and conditions set forth below, which acts resulted in the articles being misbranded while held for sale.

*See also Nos. 6546–6548.